
(2010) 11 KL CK 0129

In the High Court Of Kerala

Case No : Writ Petition (C) No. 35600 of 2008 (K)

Sandhya Kurumthottickal

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:

Prevention of Cruelty to Animals Act, 1960 — Section 33, 34, 35

Citation : (2010) 3 KLJ 686 : (2010) 4 KLT 580

Hon'ble Judges : Thottathil B. Radhakrishnan, J;P. Bhavadasan, J

Bench : Division Bench

Advocate : Siby Mathew and Philip J. Vettickattu, for the Appellant; Government Pleader, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.

1 We have heard learned counsel for the petitioner, learned counsel for the Travancore Devaswom Board and learned senior Government Pleader. We have the benefit of the affidavit dated 27.10.2010 filed by the District Animal Husbandry Officer, Pathanarnthitta. It discloses that the Government is taking effective steps, but the fact of the matter remains that the plight of the donkeys, if they are put to operation in connection with the Sabarimala festival season for movement of goods etc., continue to be a saga of suffering. We have given our anxious consideration to the materials on record, including the inputs through different paper reports, contents of which are not countered on facts offered by the State Government or the TDB. The requirement of healthy donkeys for movement of goods from Pampa and elsewhere to Sannidhanam is also a matter which cannot be ignored. The petitioner is right in saying that the Central Rules which apply to the Management of Wild Life and also Management of Forests, are not being appropriately considered and applied to govern the movement of the animals which are essentially stated to be brought from Tamil Nadu. The clear suggestion in the materials is that the animals which are brought to Kerala for the purpose of the season are essentially put to gruesome cruelty, ultimately

resulting in their being crippled, disabling them even depriving life. The petitioner rightly suggests that in most of the cases, the sick or disabled animals are thereafter left to suffer and ultimately die in painful conditions and such animals may only ultimately turn out to be feed for the wild Carnivores. Animals are an integral part of the Indian economy. Animals have been and are being used in various fields, specially agriculture, transportation and amusement, etc. To reap maximum gains, they have been exploited by human beings by using coercive methods and by inflicting unnecessary pain. In order to prevent cruelty to animals. the then British Government in India enacted the Prevention of Cruelty to Animals Act. 1890(11 of 1890). During the course of administering this Act, many deficiencies were found. To put the law on sound footing, the Government of India appointed a Committee to investigate and suggest measures for the prevention of cruelty to animals. The said Committee drew attention to a number of deficiencies in the 1890 Act and suggested its replacement by a more comprehensive Act. In terms of the Prevention of Cruelty to Animals Act, 1960, we have provisions to prevent infliction of unnecessary pain or -suffering on animals. It was for that purpose and to amend the law then existed in relation to prevention of cruelty to animals, that the said Act was brought into force in 1960. In terms of that Act, different Rules are framed. including the Prevention of Cruelty of Draught and Pack Animals Rules, 1965 and the Transport of Animals Rules, 1978.

2. The Prevention of Cruelty to Draught and Pack Animals Rules, 1965 provides various restrictions, including the maximum load that donkeys could be forced to carry, being pegged at 50 kgs. and general conditions that such animals cannot be forced to work for more than 9 hours a day in the aggregate, which is the maximum and which would depend again on the question of different terrains. Chapter V of those Rules regulate the transport of Equines, which applies to transport of donkeys as well. Rules 96 and 97 in Chapter IX of those Rules regulate issuance of certificate before transportation. This means that except with the support of appropriate certification in terms of the said Rules, donkeys could not be transferred or transported in any manner. Transport of donkeys by Goods vehicles, rail etc. are also governed by the Rules referred to above. Even if the donkeys are moved by walking them through the entire transit, the relevant among the above referred rules would govern; including the requirement for appropriate certification and general conditions for transport which are contained in Rule 98 of the said Rules. It is the requirement of the rules that animals which are to be transported shall be healthy and in good condition and such animals shall be examined by a veterinary doctor for freedom from infectious diseases and their fitness to undertake the journey, provided that the nature and duration of the proposed journey shall be taken into account while deciding upon the degree of fitness. There is prohibition against transport of any animal which is unfit for transportation and animals which" are new born, diseased, blind, emanciated, lame, fatigued or having given birth during the preceding seventy two hours or lively to give birth during transport shall not be transported.

Diseased animals have to be segregated and at any rate, they cannot be transported for being put to use where they are to be utilised in commercial activities.

3. Equally, the report of the District Animal Husbandry Officer points out that the donkeys were found to have different disease conditions like wounds, lameness, anorexia and conjunctivitis. Obviously, this situation, if not appropriately cared for and treated, would also result in inconvenience for the devotees who congregate in Sabarimala and nearby places. It would also, in certain conditions, lead to transmission of diseases to other animals, which is an anathema, going by the universally accepted practices in animal management, in terms of the different protocols governing the management of wild life.

4. The different provisions of the Prevention of Cruelty to Animals Act, 1960, in particular, Sections 33, 34, 35 etc. provide different regulatory powers as also the power to take appropriate action.

5. Having regard to the aforesaid, we direct that all Police Officers and Executive "Magistrates exercising powers under the Code of Criminal Procedure as also other officers in terms of law to take action in accordance with the provisions of the aforesaid Act, and to ensure that no donkey is moved into the area of Sabarimala. Pampa, Erumely, Nilackel and other areas connected with the Sabarimala season except in accordance with the provisions of the Prevention of Cruelty to Animals Act 1960 and different Rules framed thereunder, particularly the Prevention of Cruelty to Animals Rules, 1960 and the Transport of Animals Rules, 1978. It is further ordered that no vehicles carrying donkeys would be permitted to move into the State of Kerala without appropriate certification as to their health in terms of Rule 96 of the Transport of Animals Rules, 1978 having been issued by the appropriate authority having jurisdiction over the area from where the donkeys are brought in. It is further ordered that no donkey will be put to use in connection with any of the activities in the aforesaid places except with appropriate certification as to health by the District Animal Husbandry Officer or the team of Animal Husbandry Officers who will be available in Pampa.

6. In the writ petitioner, we see woman empowerment. She stands single handed, even without the support of her organisation, to state that she is prepared to cooperate appropriately, including by making visits and filing report on the various aspects of the donkeys which are engaged in connection with the works in the season and other matters. She may do so though appropriate agent as she may chose. The reports, if any, by her could be submitted to the District Animai Husbandry Officer, Pathanamthitta. She could also file such reports before the appropriate Executive Magistrate who may have jurisdiction over the area in question.

7. We are quite surprised that it is suggested that organisations which are meant to work for the welfare of the animals in terms of the Prevention of Cruelty to Animals Act, 1960 and other relevant statutory provisions are really not

functioning. We are told that the different organisations which claim to be working under the Animal Welfare Board of India, do not really take any appropriate action for protection of the animals or for ensuring that the needful is done for their welfare even in terms of the Constitution and the laws. The learned Special Government Pleader will, therefore, ensure that the Principal Secretaries in the appropriate departments in the Government of Kerala brings to the notice of the Animal Welfare Board of India, the need to have appropriate action, if authorities working under that Board or under the auspicious of that Board are not carrying out their functions, duties and responsibilities. The Prevention of Cruelty to Animals (Establishment and Regulation of Societies for Prevention of Cruelty to Animals) Rules, 2001 governs the constitution of Societies for Prevention of Cruelty to Animals (SPCA) and the requirement to set up infirmaries and animal shelters.

8. Apart from the directions contained herein above, the respondents will also abide by all the other directions issued in this writ petition as well as during the previous years in relation to the care of donkeys. The TDB will immediately take action for the allotment of further suitable place in Pampa for the utility of the Pampa Camp Veterinary Dispensary for stocking medicines and equipments and also provide appropriate quarantine area to shelter diseased donkeys, if any. It is also ordered that the TDB will make provisions for food of animals which are put in the quarantine area. There will also be a direction to the State Government and the TDB to ensure that the contractors who bring in the donkeys will be charged reasonably for food etc. for animals, which happen to be maintained in the quarantine area. It will also be open that appropriate fee is collected by the authority concerned, for certification. Learned Government Pleader will give strict instructions to officers at entry points of the State to ensure that the directions are complied with as regards certification of the donkeys.

The petitioner, if so advised, will place appropriate report. Post after three months, unless this writ petition is moved earlier.